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2001 WL 1339914 (Bd. Pat. App & Interf.)
(Cite as: 2001 WL 1339914 (Bd. Pat. App & Interf.))

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Board of Patent Appeals and Interferences

Patent and Trademark Office (P.T.O.)
EX PARTE RICHARD BROUILLET, JR.

Appeal No. 1998-2297
Application 08/353,622
HEARD: April 12, 2001

Warren A. Kaplan

Choate, Hall and Stewart

Exchange Place

53 State Street

Boston, MA 02109-2891

Before OWENS, TIMM and DELMENDO

Administrative Patent Judges.

OWENS

Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the examiner's final rejection of claims 1, 2, 4-8 and 11. Claims 9 and 10, which are all of the other claims remaining in the application, stand withdrawn from consideration by the examiner as being directed toward a nonelected invention.

THE INVENTION

The appellant claims a method for cleaning a glass surface of a mirror by using a portable, high-speed rotary power tool to rub the surface with a pad having thereon an acidic, abrasive composition. Claim 1 is illustrative:

1. A method for cleaning a glass surface of a mirror, comprising:
 - affixing a pad to a portable, power tool having means for engaging the pad;
 - applying a composition having a pH less than 7.0 and containing an abrasive to the pad;
 - applying the pad to the glass surface;
 - operating the tool in a rotary motion at high speed until the glass surface is clean;
 - and
 - removing excess composition from the glass surface.

THE REFERENCES

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Thomas et al. (Thomas) 5,192,460 Mar. 9, 1993
McLaughlin WO 84/03459 Sep. 13, 1984

THE REJECTION

Claims 1, 2, 4-8 and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over McLaughlin in combination with Thomas.

OPINION

~~We reverse the aforementioned rejection. We need to address only claim 1, which is the sole independent claim.~~

McLaughlin discloses "[a] dry glass cleaner in the form of a flexible, porous substrate base which is impregnated with fine particles of a water-insoluble solid which are adapted to disperse the dirt present on a soiled glass surface into a thin, opaque film when the cleaner is moistened and wiped over the glass surface" (abstract). "When the base, which may be in the form of a porous sheet, is wetted and wiped over a glass, ceramic, or other nonporous surface, the water insoluble material is physically transferred to the glass surface where it mixes with the soil to leave a thin, visible film or haze. The film or haze, either in the dry, partially dry, or wet state, is then wiped off the window with an uncoated paper or cloth towel" (page 3, lines 8-15).

Thomas discloses "an acidic microemulsion that can be sprayed onto the surface to be cleaned, and wiped off without usual rinsing, and still will leave the cleaned surface bright and shiny" (col. 1, lines 11-14).

*2 The appellant's claim 1 recites that a pad having thereon an abrasive, acidic composition is affixed to a portable, power tool which is rotated at high speed until the glass surface is clean. During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, as the claim language would have been read by one of ordinary skill in the art in view of the specification and prior art. See *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983); *In re Herz*, 537 F.2d 549, 551, 190 USPQ 461, 463 (CCPA 1976); *In re Okuzawa*, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976); *In re Kroekel*, 504 F.2d 1143, 1146, 183 USPQ 610, 612 (CCPA 1974); *In re Moore*, 439 F.2d 1232, 1235, 169 USPQ 236, 238-39 (CCPA 1971). The applied prior art does not mention power tools, and the appellant's specification discloses only rotary speeds of about 9,000 to about 13,000 revolutions per minute (specification, page 3, lines 1-2; page 4, lines 14-15). Thus, we interpret "high speed" in the appellant's claim 29 as meaning that the rotary speed is on the order of about 9,000 to about 13,000 revolutions per minute.

The examiner argues (answer, page 4) that "it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine [sic, routine] skill in the art. *In re Venner*, 120 USPQ 192."

~~In *In re Venner*, 262 F.2d 91, 94, 120 USPQ 192, 194 (CCPA-1958), the appellants argued that "the basis for allowance of the appealed claims [to an apparatus for molding trunk pistons of aluminum and magnesium alloys] resides in the combination of the old permanent-mold structures together with a timer and solenoid which~~

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automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court stated that "it is well settled that it is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result." Venner, 262 F.2d at 95, 120 USPQ at 194. In Venner, however, all limitations in the claims, including the automatic means, were disclosed in the applied references. See Venner, 262 F.2d at 96, 120 USPQ at 195.

In the present case, unlike in Venner, the examiner has not provided a reference which discloses a high-speed rotary power tool, let alone one which is used for cleaning glass. The examiner has merely relied upon a per se rule that providing a mechanical or automatic means to replace manual activity which has accomplished the same result is unpatentable. As stated by the Federal Circuit in *In re Ochial*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995), "reliance on per se rules of obviousness is legally incorrect and must cease." Moreover, as correctly pointed out by the appellant (brief, pages 4-5), the examiner has not established that manual rubbing accomplishes the same result as a rotary power tool.

*3 The examiner argues that "it would have been obvious for one skilled in the art to use the power tool with certain speed instead of the manual pad to obtain optimum results" (answer, page 6). Both of the references relied upon by the examiner, however, indicate that little rubbing is required to clean surfaces using the disclosed compositions. McLaughlin states that "a dried strip of the film formed by the application of a wetted window cleaner to a glass surface should be completely removable by no more than 5-6 passes, preferably 1-3 passes of a dry paper towel applied to the film at a pressure of about 1 lb./sq. inch, a force which approximates the wiping force applied by an average user to the dried film on a vertical glass surface" (page 10, lines 13-19), and that it is "an object of the present invention to provide a product which minimizes the effort required to clean a glass surface" (page 2). Thomas teaches: "Sometimes, the product may be formulated as an 'aerosol spray type', so that its foam discharged from the aerosol container will adhere to the surface to be cleaned. At other times the aqueous medium may be such as to result in a gel or paste, which is deposited on the surface by hand application, preferably with a sponge or cloth, and is removed by a combination of rinsing and wiping, preferably with a sponge, after which it may be left to dry to a shine, or may be dried with a cloth" (col. 10, lines 21-30). Thomas also discloses: "In use, the microemulsion is sprayed onto 'bathtub ring' on a bathtub, which also includes lime scale, in addition to soap scum and greasy soil. The rate of application is about 5 ml. per 5 meters of ring (which is about 3 cm. wide). After application and a wait of about two minutes the ring is wiped off with a sponge and is sponged off with water. It is found that the greasy soil, soap scum, and even the lime scale, have been removed effectively. In those cases where the lime scale is particularly thick or adherent a second application may be desirable, but that is not considered to be the norm" (col. 11, lines 19-29). The examiner has not explained, and it is not apparent, why these disclosures of use of little wiping with a paper towel or sponge would have indicated to one of ordinary skill in the art that optimum results would be obtained by rubbing the surface using a high speed rotary power tool.

For the above reasons we conclude that the examiner has not carried the burden of establishing a prima facie case of obviousness of the appellant's claimed invention. Accordingly, we reverse the examiner's rejection.

DECISION

The rejection of claims 1, 2, 4-8 and 11 under 35 U.S.C. § 103 over McLaughlin in combination with Thomas is reversed.

REVERSED

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*4 TERRY J. OWENS

Administrative Patent Judge

CATHERINE TIMM

Administrative Patent Judge

ROMULO H. DELMENDO

Administrative Patent Judge

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KEYCITE

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History

- => 1. EX PARTE RICHARD BROUILLET, JR., 2001 WL 1339914 (Bd. Pat. App & Interf. Apr 12, 2001) (NO. APL 1998-2297)

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